Paper No. 9
CEW

THIS DISPOSITION IS NOT CITABLE
AS PRECEDENT OF THE TTAB MARCH 31, 98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re House of Westmore, Inc.

Serial No. 74/671,877

Michael A. Painter of Isaacman, Kaufman & Painter for applicant.

Dominick J. Salemi, Trademark Examining Attorney, Law Office 107 (Thomas Lamone, Managing Attorney).

Before Hanak, Quinn and Walters, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

House of Westmore, Inc. has filed a trademark application to register the mark PRISMATIQUE COLOUR for "cosmetics, namely, liquid foundation."[1] The application includes a disclaimer of COLOUR apart from the mark as a whole.

---

[1] Serial No. 74/671,877, in International Class 3, filed May 9, 1995, based on an allegation of use of the mark in commerce, alleging first use and first use in commerce as of July 20, 1989. In the application, applicant noted its ownership of Registration No. 1,514,237 which applicant alleges was canceled under Section 8 of the Trademark Act. Applicant alleges, further, that the canceled registration is for the same mark and the same goods as this application.

The Trademark Examining Attorney has finally refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark PRISMATIC, previously registered for "liquid make-up preparation for the face, which can also be used as a powder base,"[2] that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

In the analysis of likelihood of confusion in this case, two key considerations are the similarities between the marks and the similarities between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Turning, first, to the goods, we take judicial notice of the definition of "foundation" as "a cosmetic, as a cream or liquid, used as a base for facial make up."[3] As such,

---

[2] Registration No. 500,648 issued June 15, 1948, to Anatole Robbins, Inc., in International Class 3. The record states that the present owner of the registration is Charles of the Ritz Group Ltd. [Second renewal for a term of twenty years from June 15, 1988; Sections 8 and 15 affidavits accepted and acknowledged, respectively.]

[3] *Random House Dictionary of the English Language*, 2nd ed. unabridged (1987).

applicant's goods are clearly either identical or closely related to the goods identified in the cited registration.

Turning, next, to the marks, the Examining Attorney contends that PRISMATIQUE is the dominant portion of applicant's mark and notes, for the first time in his brief, that PRISMATIQUE is a French word which translates into English as PRISMATIC.[4] The Examining Attorney concludes that applicant has, thus, appropriated registrant's mark in its entirety and added to it the merely descriptive term COLOUR.

Applicant contends that the Examining Attorney's position is contrary to the position the Office took in permitting its mark to register previously and, further, that the cited registrant did not object, through an opposition or cancellation proceeding, to the prior registration of the mark. Applicant also contends that the Examining Attorney has not considered the marks in their entireties, in which case the term COLOUR adequately distinguishes applicant's mark from registrant's mark.

We agree with applicant that we must base our determination on a comparison of the marks in their entireties. However, we are guided, equally, by the well-

[4] Although the Examining Attorney references a dictionary excerpt which is not in the record, we take judicial notice of the entry in the *Collins Robert French Dictionary* (2nd ed. 1994) stating that PRISMATIQUE is a French word, an adjective, which translates into English as PRISMATIC.

established principle that, in articulating reasons for reaching a conclusion on the issue of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties." *In re National Data Corp.,* 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). Further, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The issue is whether the marks create the same overall commercial impression. *Visual Information Institute, Inc. v. Vicon Industries Inc.,* 209 USPQ 179 (TTAB 1980). Due to the consuming public's fallibility of memory, the emphasis is on the recollection of the average customer, who normally retains a general rather than a specific impression of trademarks or service marks. *Spoons Restaurants, Inc. v. Morrison, Inc.,* 23 USPQ2d 1735 (TTAB 1991), *aff'd*. No. 92-1086 (Fed. Cir. June 5, 1992); and *In re Steury Corporation*, 189 USPQ 353 (TTAB 1975).

In this case, we find that PRISMATIQUE is the dominant portion of the mark PRISMATIQUE COLOUR, as PRISMATIQUE is, at most, a suggestive term in connection with applicant's identified goods and it defines and distinguishes the noun COLOUR. COLOUR is a British form of the American English

word "color"[5] and, as applicant admits, it is merely descriptive in connection with the identified goods. Thus, the dominant portion of applicant's mark is substantially similar to opposer's mark PRISMATIC. To the extent consumers viewing these marks over time actually recall the distinctions between PRISMATIQUE and PRISMATIC, the term PRISMATIQUE is likely to be viewed as merely a fanciful, but related, version of the term PRISMATIC formed by dropping the final "C" in PRISMATIC and substituting "QUE."

We find that when opposer's mark, PRISMATIC, and applicant's mark, PRISMATIQUE COLOUR, are considered in their entireties, they create substantially similar overall commercial impressions. Because applicant's mark essentially encompasses opposer's mark and merely substitutes a fanciful ending to the word PRISMATIC and adds the descriptive term COLOUR, it is likely that, when considered in relation to the identical or closely related goods of the parties, consumers may mistakenly believe that applicant's goods are part of registrant's line of goods identified by its mark PRISMATIC.

We believe that the Examining Attorney's statement that PRISMATIQUE is a French term which is equivalent to PRISMATIC to be unnecessary to our determination. We note that while the term PRISMATIQUE is a French word, the term

[5] As noted in *The Random House Dictionary of the English Language*,

COLOUR is an English word that is primarily British in usage. Thus, applicant's mark as a whole is not a French phrase. Further, in the French language an adjective, such as PRISMATIQUE, would ordinarily follow the noun that it modifies. The mark before us appears in English syntax as the term PRISMATIQUE precedes the term COLOUR. As a general rule, in considering the meaning and connotation of a mark in the context of a determination of likelihood of confusion, there is no distinction between English terms and their foreign equivalents, despite the fact that the foreign term may not be commonly known to members of the general public in the United States. *See, In re Atavio Inc.*, 25 USPQ2d 1361 (TTAB 1992) and cases cited therein. However, the equivalency in connotation between two marks does not, in and of itself, determine the question of likelihood of confusion. *In re Ithaca Industries, Inc.,* 230 USPQ 702 (TTAB 1986). In this case, because applicant's mark as a whole is not a French term and the term PRISMATIQUE is similar in all respects to the term PRISMATIC, we do not find it useful to consider PRISMATIQUE as it appears in the phrase PRISMATIQUE COLOUR as a term that would necessarily be perceived, by either French or English speaking consumers, as a French term that is equivalent to the English term PRISMATIC. Rather, it is equally likely that

---

supra, of which we take judicial notice.

PRISMATIQUE will be viewed as a fanciful version of PRISMATIC. In either case, the similarity in appearance, sound and connotation between the terms PRISMATIQUE and PRISMATIC is substantial.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of registrant's mark PRISMATIC and applicant's mark PRISMATIQUE COLOUR, their contemporaneous use on the identical or closely related goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

We are not convinced otherwise by applicant's arguments pertaining to its prior registration. Not only are we not privy to the record in the prior registration, but the propriety of the issuance of that registration is not before us and neither the Board nor the Examining Attorney are bound by the determination made by another Examining Attorney who handled that case.

Decision: The refusal under Section 2(d) of the Act is affirmed.

E. W. Hanak

T. J. Quinn

C. E. Walters
Administrative Trademark Judges,

Trademark Trial and Appeal Board